

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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TYRONE PACE,

Plaintiff,

v.

THOMAS POOLE, et al.,

Defendants.

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**Hon. Hugh B. Scott**

05CV78

(CONSENT)

**Order**

Plaintiff in this action has applied to the Court for appointment of counsel pursuant to 28 U.S.C. § 1915(e). (Docket No. 30, letter of June 12, 2006, filed by the Court). Also pending before the Court is defendants' motion for summary judgment (Docket No. 22), with a briefing schedule (Docket No. 27, Order of June 8, 2006) which requires responses by **August 31, 2006**, and any reply by **September 29, 2006**, with the motion deemed submitted as of the latter date.

Under 28 U.S.C. § 1915(e), the Court may appoint counsel to assist indigent litigants. Sears, Roebuck & Co. v. Charles W. Sears Real Estate, Inc., 865 F.2d 22, 23 (2d Cir. 1988). Assignment of counsel in this matter is clearly within the judge's discretion. See In re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1986). The factors to be considered in deciding whether or not to assign counsel are set forth by the Second Circuit in Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986). Counsel may be appointed in cases filed by indigent plaintiffs where it appears that such counsel will provide substantial assistance in developing petitioner's arguments, the appointment will otherwise serve the interests of justice, and where the litigant has made "a

threshold showing of some likelihood of merit.” Cooper v. A. Sargenti Co., 877 F.2d 170, 174 (2d Cir. 1989).

The Court has reviewed the facts presented herein in light of the factors required by law. Based on this review, plaintiff’s motion for appointment of counsel is **DENIED WITHOUT PREJUDICE AT THIS TIME**. It remains the plaintiff’s responsibility to retain his own attorney or to press forward with his lawsuit pro se. 28 U.S.C. § 1654.

So Ordered.

/s/ Hugh B. Scott  
Hon. Hugh B. Scott  
United States Magistrate Judge

Dated: Buffalo, New York  
June 19, 2006